

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 28TH FEBRUARY 2007 / 9TH PHALGUNA 1928

Crl.Rev.Pet.No. 627 of 1999()

CRA.145/1999 of ADDL.SESIONS COURT, KOZHIKODE
CC.316/1996 of JUDL. MAGISTRATE OF FIRST CLASS, KUNNAMANGALAM
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REVN. PETITIONER:

NALINI, W/O. MOHANAN,
MALAYIL, PADINHATTUMMURI AMSOM,
KIZHAKKUMMURI DESOM,
KOZHIKODE TALUK.

BY ADV. SRI.SUNNY MATHEW

RESPONDENTS:

THE EXCISE INSPECTOR,
CHELANNUR, REPRESENTED BY
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA AT
ERNAKULAM.

BY ADV. SRI. AMJAD ALI, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 28/02/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

K.R.UDAYABHANU, J

CRL.R.P.No.627 of 1999

Dated this the 28th day of February, 2007

ORDER

Revision petitioner/accused stands convicted for the offence under Section 58 of the Abkari Act in C.C.316/96 and the same was confirmed by the Sessions court in Crl.A.No.145/97, i.e., to undergo simple imprisonment for a period of three months and to pay a fine of Rs.15,000/- and in default, to undergo simple imprisonment for one month. The case of the revision petitioner is that the ingredients of Section 58 of Abkari Act is not established and that the order of imposing fine of Rs.15,000/- is beyond the powers of the J.F.C.M. Court.

2. The evidence adduced in the matter consisted of the testimony of PW1, preventive officer and PW2, excise guard of the detecting squad who have deposed with respect to the incident, as to the sighting of the accused in the road on the particular day at 7 A.M. and detecting the illicit liquor that she

was carrying in a plastic can. There was also an independent occurrence witness who turned hostile to the prosecution. PW5 is the excise inspector who laid the charge. Chemical analysis report would show that the alcohol content was 29.53%. The alcohol content of the arrack manufactured at the state brewery is 42.86%. The above witnesses have also stated that the commodity seized was tasted and smelt and that they are satisfied that the liquor found in possession of the accused was illicit liquor. The evidence of witnesses are supported by the contemporaneous records of detection and seizure.

3. I find that the evidence adduced in the matter do establish the fact that the revision petitioner/accused is guilty of offence charged. There is no scope for interference. All the same, considering the plea of the counsel for the revision petitioner, I find that that the punishment for the offence under Section 58 of the Abkari Act is liable to be modified. It is submitted that the husband of the petitioner is bed ridden for a few years and that she has got children to be looked after. Further the incident has

taken place in 1995 i.e., a decade earlier. In these circumstances, the sentence is reduced to a fine of Rs.5,000/- and in default, to undergo imprisonment for 15 days. Revision petitioner is granted one month's time from today onwards to deposit the fine amount.

The Criminal Revision Petition is disposed of accordingly.

K.R.UDAYABHANU,JUDGE

RV

K.R.UDAYABHANU, J

Crl.R.P.No.899 of 2001

ORDER

15th February, 2007

